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HUMAN RIGHTS COMMITTEE

Forty-third session

SUMMARY RECORD OF THE 1108th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 31 October 1991, at 10 a.m.

Chairman: Mr. POCAR

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Third periodic report of Iraq (continued)

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The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Iraq (CCPR/C/64/Add.6) (continued)

1. The CHAIRMAN invited the Committee to continue its questions in connection with section XI of the list of issues (Freedom of religion and expression; prohibition of propaganda for war and of incitement to national, racial or religious hatred).

2. Mr. WENNERGREN observed that no country could have total freedom of expression, and article 19 of the Covenant allowed countries to impose restrictions for the purpose of ensuring respect of the rights or reputations of others and the protection of national security, public order, public health or morals. In principle, restrictions could be imposed in two ways: by establishing censorship with regard to the press, the mass media, films and videos, which would then involve licensing, and by making it an offence to use certain expressions and impart certain ideas in public. The imposition of the latter method ran the risk of suffocating a nation if all kinds of expression on political or cultural matters were made punishable. During the presentation of Iraq's second periodic report he had had the impression that the country was close to that point, given the large number of outlawed expressions. He wondered to what extent censorship was applied in Iraq at the present time and whether the Government was considering any review of the use of that method, in the light of its assertions that its legislation was being brought more closely into line with the Covenant. He also wished to know to what extent expressions were outlawed in the Penal Code or other legislation and whether Iraq was considering any developments to allow greater freedom of expression in the future.

3. Mr. MAHMOOD (Iraq) said that freedom of opinion and expression was guaranteed in the Iraqi Constitution subject to legislation intended to protect national security, public order, public health and public morals in accordance with the Covenant. As Mr. Wennergren had rightly said, all countries had restrictions of some kind, but they were related to the level of development and consequently varied from one society to another.

4. The journalist mentioned by Mr. Herndl must have been Mr. Bazoft. He had not entered Iraq to express his views but to obtain secret information in parts of the country which were off limits to journalists on account of the military installations there. A public investigation had found him guilty of espionage, which carried the death penalty, and he had accordingly been executed in accordance with the Penal Code. The retention of the death penalty for the most serious crimes was permissible under the Covenant, and members of the Committee would undoubtedly agree that espionage fell into that category.

5. Mr. Herndl had also asked whether there were any television or radio stations not under government control in Iraq. As yet, there were no such private-sector activities: the existence of uncontrolled and unofficial activities of that kind was development related, and Iraq had not yet reached

the requisite level of development in its institutions. It nevertheless looked forward to the time when such activities would be possible, and in any event they were not prohibited by law.

6. Mr. Herndl had also referred to the Ministry of Information. Iraq was endeavouring to revive its Arab Islamic culture and to teach the precepts of that civilization through radio and television. In keeping with its Constitution, it guaranteed respect for all religions and permitted individuals to embrace the religion of their choice. At the same time it had an official State religion, Islam, which was considered to be a historic part of Arab civilization. Arabs had built up major civilizations before Islam in Iraq and in other countries and those civilizations, together with Islamic civilization, were integral parts of mankind's heritage.

7. Turning to the questions raised by Mr. Wennergren, he said it had been very difficult to guarantee total freedom of expression, even though it was provided for in the Constitution, during the Iran-Iraq war, and in any event such freedom could only be exercised in compliance with rules governing morals and public order in particular. Pornographic photographs, for example, were prohibited in Iraq. The most important matter, however, was that the country was trying to establish modern constitutional structures. To that end, legislation permitting a multi-party system had been promulgated and allowed all political parties the right to publish their own magazines or journals. A greater range of ideas and opinions would undoubtedly result.

XII. Freedom of assembly and association (articles 21 and 22)

(a) With reference to paragraph 7 of the report, please provide additional information on recently drafted legislation relating to the freedom of political parties. Has the law entered into force?

(b) Have the provisions of criminal law making it a serious crime fraudulently to join the Baath Party or to defect from it been abolished?

(c) With reference to Revolutionary Command Council decision 9 mentioned in paragraph 66 of the report, please clarify the legal and practical consequences attached to the optional character of membership of professional federations, trade unions, associations and clubs and specify the criteria and procedures for the registration of associations and trade unions.

XIII. Right to participate in the conduct of public affairs (article 25)

(a) How is equitable access of members of minority groups to public service ensured?

(b) What are the expected consequences of the adoption of a new Constitution and a new law on the freedom of political parties with regard to participation of citizens in the conduct of political life?

8. Mr. MAHMOOD (Iraq), in deference to a request by the Chairman that information should not be repeated, pointed out solely, in reply to question XII (a), that law 30/1991 on political parties had been promulgated and was now in force. Question XII (b) had been answered earlier in another

connection. In reply to question XII (c), decision 9 made membership of professional federations, trade unions, associations and clubs optional, whereas it had been compulsory under previous legislation when the Government had considered that people should join for technical and professional reasons.

9. With regard to question (a) of section XIII, the equality of citizens and equal opportunities were guaranteed under article 19 of the Constitution and article 30 (b) made it very clear that equality in appointment to public office was guaranteed by law. It was nevertheless subject to specific rules and procedures and in particular was based on competence. In no case could access to public office be based on adherence to any religion, belief or group.

10. As far as question XIII (b) was concerned, the promulgation of the law on political parties would undoubtedly lead to an increase in the number of those parties and hence to broader participation by Iraqi citizens in public life. The new Constitution, when promulgated, would provide an appropriate framework for the encouragement of a multi-party system and consequently a diversity of ideas and opinions. It would certainly help to promote citizens' rights and freedoms generally and those under article 25 of the Covenant specifically.

11. Mr. ANDO, referring to paragraphs 70 and 71 of the report, said that presumably the major amendments to the National Assembly Act were intended to improve the previous system. As he understood it, however, the National Assembly was now able to remove a member by challenging his good standing. There was a danger of popularly elected members being suspended by an arbitrary decision taken by two thirds of the membership. He therefore wondered what had been the purpose of the new amendment, what was meant by the "good standing" of a member and whether the procedure had been applied following the elections of 1 April 1989, as referred to in paragraph 74 of the report.

12. Mr. SADI asked how the members of the National Assembly had been elected, on what basis the elections had been held, whether it was intended to hold new elections following the promulgation of the new Constitution and whether there would be any changes in the regulations for the holding of elections. Why had the adoption of the Act on political parties not been postponed until after the promulgation of the new Constitution?

13. Mr. EL SHAFEI, referring to section XII (c) of the list of issues, asked what had been the practical and legal results of decision No. 9 of 3 January 1988 to make membership of professional federations, trade unions, associations and clubs optional. Had any new non-governmental organizations or other associations been established in that context?

14. Mrs. HIGGINS recalled that, in response to her question concerning the special position of the Baath Party in the context of Act No. 30 of 1991, the Iraqi delegation had explained that the Act in no way discriminated between political parties. What she had, in fact, wished to know was how the Act would operate in view of the special position of the Baath Party under article 38 of the Constitution and whether its provisions were to be changed in the new Constitution.

15. Mr. MAHMOOD (Iraq), replying to Mr. Ando's question concerning paragraph 71 of the report, said that the National Assembly had accorded all Iraqi citizens the right to challenge the good standing of any of its members. That provision was designed to ensure the validity of the elections. There might conceivably be some doubts in a particular electoral district about the proper conduct of a candidate in an election, and that was why the opportunity to challenge his good standing was available. No member of good faith would be challenged in that way.

16. Replying to Mr. Sadi's questions, he said that the election of members to the National Assembly was governed by National Assembly Act No. 55. The Assembly was composed of 250 members, who were elected by general and secret ballot. All Iraqi citizens of 18 years of age and above had the right to vote. To be eligible for election to the National Assembly, they must be at least 25 years of age, must hold at least a primary-school certificate and be able to read and write, and must be Iraqi citizens at birth. Candidatures must be submitted to the administrative director of the respective region within 20 days following the issue of the decree announcing the date of the election. If an application was rejected, the candidate had to be informed within 24 hours of the reasons for such rejection. He could appeal within three days to the magistrate in charge of the electoral district, and if that was unsuccessful he could make a further appeal at a higher district level and thence, if still unsuccessful, to the authorities at the national level headed by the President of the Court of Appeal.

17. With respect to the competence of the National Assembly under article 47 of the National Assembly Act, that body was empowered to legislate, adopt the budget, submit bills, approve conventions, discuss the country's foreign policy and question any minister. It could propose the dismissal of any member of the Government who had proved incapable of fulfilling his functions, and could deal with any questions submitted to it following their consideration by other bodies. It was further empowered to give its views to the President of the Republic on any question it deemed appropriate. It was anticipated that new elections would be held following the adoption of the new Constitution.

18. Mr. Sadi had asked why the Act on political parties had been promulgated prior to the adoption of the new Constitution. Iraq wished to move towards a multi-party system and the Constitution would take some time to prepare. It had therefore been considered useful to go forward with the law on parties in order to guarantee pluralism in law and in practice.

19. In reply to the question raised by Mr. El Shafei, membership of professional federations, trade unions, associations and clubs had formerly been compulsory for technical and professional reasons, but membership had now been made optional in the context of complete freedom of the individual, although most workers found it in their interest to belong to a trade union. Some new associations and clubs had been established following the promulgation of Revolutionary Command Council decision No. 9.

20. In reply to Mrs. Higgins' question concerning the position of the Baath Party, he said that the existing Constitution did not stipulate that there should be only one party, and others in fact existed. The Act on political

parties could not coexist with the present Constitution and that was why the new Constitution, the draft text of which had been published in July 1990, before the Act on political parties had been adopted, was being prepared. But for the war against Iraq, the new Constitution would by now probably have been in force. In the circumstances, it had been considered necessary to go ahead with the Act on political parties in order to guarantee pluralism and democracy. The new Constitution would certainly be in line with the principles of that Act.

21. Mr. EL SHAFEI said that the competence of the National Assembly under the National Assembly Act to propose and adopt bills and to approve the budget did not appear to be in line with article 53 of the Constitution.

22. Mr. MAHMOOD (Iraq) said it appeared that the copies of the Iraqi Constitution which members of the Committee had before them were not the latest version, since article 53 did not relate to the matters to which Mr. El Shafei had referred. He would be happy to make copies of the latest version available.

23. The CHAIRMAN invited members of the Committee to make their concluding observations on the third periodic report of Iraq.

24. Mr. EL SHAFEI thanked the Iraqi delegation for its efforts to deal with members' questions. No one could fail to sympathize with the Iraqi people in their plight, as described by the head of delegation. A similar tragic situation was being experienced at different levels by other peoples in the region. There had been wholesale slaughter in Kuwait during the occupation and hundreds of thousands of people had had to leave the country. Questions could be asked about the fate of the thousands of prisoners in Iraqi jails and about the future of the peoples of the region following the events of August 1990.

25. The Committee's primary duty was to establish whether a State that had acceded to the Covenant was meeting its commitments under that instrument, whether there was any threat to the enjoyment of human rights and whether any provisions of the Covenant might have been suspended in certain circumstances. The discussion had highlighted some important issues on the compatibility or otherwise of Iraqi legislation with the provisions of the Covenant and how those provisions were applied. It had been explained that the Covenant had been adopted by a decision published in the Official Gazette and that a booklet containing all its provisions had been sent to the courts for the information of the judiciary. All Governments were required to adopt legislative measures in accordance with article 2 of the Covenant.

26. A further important point had been the extent to which the Government authorities were applying a programme of reform and how that was being done. The delegation had stated that a committee had been established to study the legislation and decisions promulgated during the state of emergency, and particularly during the Iran-Iraq war. It had further stated that, among the reforms carried out, the Act on political parties had been adopted on 16 September 1991, the Revolutionary Court had been dissolved on 22 August 1990 and a general amnesty had been declared for the particular benefit of members of political parties. The Committee had been told that

Iraq was cooperating with the Special Rapporteur on Enforced or Involuntary Disappearances. Lastly, the delegation had described the steps being taken to prepare the new Constitution, the draft text of which had been published in the Official Gazette in July 1990.

27. While all those measures were to be welcomed, it was regrettable that many of the questions raised by members of the Committee had received unsatisfactory replies. The purpose of the questions had been to ascertain what constitutional and legislative guarantees existed to protect the rights set forth in the Covenant. He had received no reply to his request for information on any changes that would appear in the new Constitution. A number of members of the Committee would have liked to see the draft text published in 1990. No reply had been received to the question concerning the composition of the Revolutionary Command Council. Article 38 (c) of the Constitution stated that that body was responsible for selecting its new members from members of the regional leadership of the Arab Baath Socialist Party. That raised certain questions as to the legal status of any political party that might be formed in accordance with the Act on political parties.

28. There were a great many differences between the provisions of the Constitution and those of the Covenant. For example, article 38 of the Constitution gave the Revolutionary Command Council the power to accuse, judge and set penalties for its own members, in clear contravention of the Covenant. Article 40 provided full immunity for members of the Revolutionary Command Council and no measures could be taken against any member without the prior authority of the Council; that was contrary to article 14 of the Covenant. Moreover, how was it possible to speak of fair trial when the Constitution stipulated that meetings must be held in camera and any information leaked would lead to the provider of such information being brought before a tribunal of the Revolutionary Command Council? How could such a stipulation be regarded as consistent with article 25 of the Covenant?

29. Articles 51, 52 and 53 of the Constitution all referred to the National Assembly, which enjoyed broad powers and could only take action on proposals supported by one quarter of its members. As the last word rested with the Revolutionary Command Council, any proposal not to its liking would not be considered. What would happen when new parties were formed?

30. All decisions and laws adopted between 17 March 1968 and 16 July 1970 remained in force and could not be abrogated except by procedures in the National Assembly. Thus the Revolutionary Command Council exerted total hegemony over the country. What rights therefore were really enjoyed by citizens?

31. Iraq had not provided all necessary guarantees for all citizens. He would like to know what Iraq's position was on the Optional Protocol.

32. Mr. SADI thanked the delegation of Iraq for its detailed and constructive replies to members' questions. It was, however, a fact that Iraq had not complied with all the provisions of the Covenant. It had not invoked article 4 which, in grave situations, permitted certain derogations of human rights. When asked why Iraq had not availed itself of article 4, the delegation had replied that Iraq would never wish to use that article and that

it desired to ensure a normal juridical situation consistent with its legislative procedure. That was an encouraging reply and it was to be hoped that Iraq, through its new legislation, would apply the Covenant and ensure that all its provisions were implemented in practice. He hoped that such a development would be a feature of Iraq's next periodic report and would correct the Committee's image of Iraq. He hoped that the report would be available before 1995.

33. Mr. HERNDL said that he had been impressed by the frank and open dialogue which had taken place between the Committee and the delegation of Iraq and welcomed the additional information provided orally to supplement the report.

34. He was concerned by the concentration of the report on recent developments without any clarification of the flow of events since 1986. It was encouraging to learn that the provisions of the Covenant were part of national law and that citizens could invoke the Covenant. State organs therefore had a duty to apply the Covenant. He hoped that the new Constitution would address the issues set out in chapter III of the current Constitution and that greater account would be taken of the provisions of the Covenant. He rejected the argument that exceptional circumstances justified derogations from rights under article 4 when the circumstances had resulted from action by the State party itself. The concentration of power in the hands of the Revolutionary Command Council provided for in the current Constitution did not correspond to the requirements of a democratic society and the separation of powers.

35. On the situation of human rights, he continued to be concerned by the fate of minorities, particularly the Kurds and others who lacked the means to express themselves and were oppressed by the State. The measures to ensure State security were very rigid. Moreover, the law permitting a multi-party system was clearly not being observed as there was still only one party in Iraq.

36. An issue which had been raised in the Committee at the previous session and had not yet been addressed by the delegation of Iraq related to the situation in Kuwait between August 1990 and March 1991. The Commission on Human Rights had appointed a Special Rapporteur to investigate the matter and the Human Rights Committee looked forward to seeing his report.

37. Miss CHANET said that the delegation of Iraq had made a serious effort at dialogue with the Committee. The information provided had not, however, allayed concerns on specific rights such as the right to life, the prohibition of torture and liberty and security of person. Adequate answers had not been given on those points.

38. The situation regarding implementation of the Covenant remained unsatisfactory. The population was clearly suffering greatly, but that should not be used by the authorities as an excuse to further diminish their human rights and thus add to their misery.

39. She had noted that work was continuing on the draft new Constitution but the statements of the delegation both at the previous session and at the current session indicated that there had been a slowdown, with the completed

text apparently being amended. She would be interested to know the timetable for the adoption of the new Constitution up to the time of the referendum.

40. The Law on political parties would remain a dead letter until the existing Constitution was amended. The Revolutionary Command Council consisted only of members of the Baath Party so that there was no means of opposing them. The only way to change that situation would be by amending the Constitution and establishing a multi-party system.

41. The Iraqi delegation had suggested that self-determination applied only to colonial peoples. Article 1 of the Covenant, however, stated clearly that all peoples had the right of self-determination. No satisfactory reply had been received from the delegation on that issue.

42. Bearing in mind the points she had made, she could not say that she was entirely satisfied with the situation of human rights in Iraq.

43. Mr. FODOR said he continued to be of the opinion that the rights specified in the Covenant were not adequately protected in Iraq and that its provisions were not being properly implemented. Iraqi legislation and practice were not in compliance with the Covenant. Examples included the situation of the Kurds and of the Shiites, which had deteriorated instead of improving since the end of the war. Article 4 of the Covenant had not been complied with. The interpretation of article 1 on self-determination, as it applied to the Kurds, was not convincing. Torture and arbitrary arrests had been widespread in the country during the reporting period. Freedom of expression, assembly and association had not been duly respected. It was perfectly admissible for a State party to indicate difficulties that adversely affected the enjoyment of human rights in the country. That was in full compliance with the guidelines of the Committee. It was also obvious that there was a link between political and civil rights on the one hand and economic and social rights on the other. But trying to justify all shortcomings in the protection of human rights on the grounds of exceptional economic difficulties was going too far. What direct impact did shortages of food and medicine have on due respect for freedom of expression and the principles of criminal justice? On 1 April 1991 the Government of Iraq had declared its new policy which included such progressive objectives as the establishment of democracy and the supremacy of the law. Since then half a year had passed and, according to information received, not many positive developments had occurred in those respects. Repealing some of the emergency legislation and enacting an amnesty law and a law on political parties did not seem to be sufficient. He had taken due note of the State party's intention to introduce a new Constitution and some new basic laws, but the whole process had been too slow, particularly in the light of the current low level of implementation of the Covenant in Iraq.

44. Despite the efforts of the Iraqi delegation to address the issues raised by the Committee, the majority of the Committee's concerns remained. Nevertheless, he thanked the delegation for having participated in the exercise.

45. Mr. PRADO VALLEJO thanked the delegation of Iraq for its cooperation, which had enabled it to become aware of the concerns of the Committee on fundamental questions connected with the implementation of the Covenant. He hoped that those concerns would be conveyed to the Government.

46. He wished to repeat that he regretted the consequences of the war which unfortunately had been provoked by the Government of Iraq; currently people who were not responsible were experiencing a tragic situation, which he hoped would improve. The blockade was very severe and, in his view, should be eased in order to reduce the sufferings of the population, who should not be treated as a conquered people.

47. It was evident that serious concerns continued to exist regarding violations of human rights. He was particularly disturbed by the repression against the Kurds, a people who had been denied their right to self-determination, and by the legislation covering the death penalty. The latter provision almost in toto violated the Covenant, bearing in mind that the death penalty was stipulated for persons leaving the party in power, committing economic crimes or holding Zionist views. Iraqi citizens had practically no remedy under existing legislation; that situation must be changed.

48. A further concern related to the situation of disappeared persons, particularly in situations of rebellion and torture. Adequate investigations must be carried out and the issue resolved.

49. Freedom of expression was limited both in fact and in law. The right of association was also restricted and a multi-party system did not really exist. Freedom of expression was not permitted and television was the monopoly of the State. Iraq had restricted rights guaranteed by the Covenant, including rights from which no derogation was permitted.

50. The concentration of power in the hands of the Revolutionary Command Council was an obstacle to democracy and the exercise of fundamental freedoms. It was perhaps a basic reason why human rights were not fully guaranteed in Iraq. It was only through a democratic system that rights could be ensured. A great effort was needed to make domestic legislation fully consistent with international law.

51. Mr. WENNERGREN expressed his appreciation of the exchange of views which had taken place with the Iraqi delegation; the answers it had provided to the Committee's questions had facilitated assessment of the current situation in Iraq and the problems and difficulties it entailed. Iraq was evidently endeavouring to adapt its institutions to meet the provisions of the Covenant, but that aim had not yet been satisfactorily achieved. He would not, however, dwell on the discrepancies to which his colleagues had drawn attention but would, rather, acknowledge the recent positive changes such as the promulgation of the law on political parties, the preparation of a new Constitution and the preparation of a code of human rights.

52. He had hoped that those reforms might have led to a broadening of the enjoyment of freedom of expression. Although he agreed with the representative of Iraq that freedom of expression was not an absolute and could be affected

by the social, economic and cultural climate prevailing in a given country, article 19 of the Covenant, in conjunction with its other articles and in particular article 25, did place limits on the extent to which freedom of expression could be restricted. He hoped Iraq would take that very important point into account in its efforts to comply with the provisions of the Covenant.

53. Mr. MYULLERSON said that, since the previous session, a degree of progress was evident both in Iraq and in the attitude of the Iraqi delegation in its dialogue with the Committee. However, he had not been entirely satisfied with that dialogue since, although the Iraqi delegation had admitted to difficulties in the human rights field and in implementation of the Covenant, it had blamed them on the war and the subsequent sanctions imposed on Iraq. He agreed that it was difficult for war and human rights to be compatible. General comment 6 (CCPR/C/21/Rev.1), through its second paragraph, signified that those unleashing war violated not only Article 2 of the Charter of the United Nations but also article 6 of the Covenant. War had been unleashed by Iraq through its attack on Kuwait, so that claiming the war as the cause of difficulties in implementing civil and political rights in Iraq merely increased the Iraqi Government's responsibility for the human rights situation. Furthermore, to have the economic blockade lifted all that was necessary was to apply United Nations resolutions and to cooperate with the teams from the United Nations or non-governmental organizations working in Iraq.

54. There were signs that the human rights situation in Iraq might be improving, such as the preparation of a new Constitution, the adoption of a law on political parties and other developments reported to the Committee. The present Constitution, however, embodied a number of provisions that contained the seeds of possible violations of human rights. He hoped they would not appear in the new text. To give examples, article 26 of the present Constitution implied that only liberties that complied with revolutionary national progressive trends were permitted in Iraq. Experience in many countries had shown that such a policy could lead to the suppression of rights promulgated in the Constitution and laws of a country. Article 28 of the present Constitution listed a number of social aims or structures that education was expected to further. However, a right was not something that could be used as a means to achieve a social aim since it was in fact a goal in itself. The retention of such provisions could therefore lead to gross violations or restrictions of proclaimed rights.

55. He welcomed the adoption of a law on political parties. However, the fact that several political parties were theoretically permitted was not the same thing as a multi-party system being in place. If the political parties in a country were all subordinated to one dominant political party which exercised absolute power, then that country was operating a one-party system.

56. Discrepancies between the laws and practices in Iraq and the provisions of the Covenant had been mentioned by other members of the Committee. He would merely make the general observation that the curbs Iraq had placed on human rights during the period under review by the Committee, in other words before August 1990, had been one of the causes of the war.

57. He hoped that the exchange of views which had taken place between the Iraqi delegation and the Committee during the present and previous sessions of the Committee would serve to improve the human rights situation in Iraq. Any criticisms voiced had been made in the interests of ensuring the well-being of the people of Iraq.

58. Mrs. HIGGINS said that formal compliance by the Iraqi Government with the requirements of the Committee had been excellent. Although the report had been somewhat overdue, great efforts had been made in difficult circumstances to submit it in time. Information had been updated as requested and real efforts made to provide the Committee with answers to its questions. The Iraqi delegation had made itself available to the Committee during two sessions. She was, furthermore, glad that at the current session the delegation no longer insisted that matters before the Security Council could not be discussed with the Committee, thereby improving the exchange of views.

59. The Committee's task was to determine whether Iraq had complied with its obligations under the Covenant during the reporting period. In the case of the aggression against Kuwait, it was quite clear that there had been massive violations of the provisions of the Covenant, the brunt of which had been borne by the Kuwaitis. Even yet, not all Kuwaiti prisoners had been returned or accounted for. She had found the reply to the question on third parties caught up in the conflict unsatisfactory. It was not acceptable to say that the circumstances had been extraordinary and that they had come to no real harm when in fact they had undergone and were still undergoing considerable psychological and other suffering.

60. As the 1987 dialogue with Iraq had shown, there had been major internal human rights problems in Iraq even before the invasion of Kuwait. In the present period following the withdrawal from Kuwait, she considered that if the human rights situation was to improve and the new laws to be effective four requirements must be satisfied. The first was that no party or group should be, either in law or in fact, in a controlling position. On that point, she associated herself with Mr. Myullerson's comments. She further assumed that the answer to her earlier question meant that section 38 would be removed from the final version of the new Constitution. Since that had apparently not been the case in the 1990 draft, and in the absence of any more recent version, she concurred with Mr. El Shafei's view of the matter.

61. Secondly, there would have to be independent courts operating in public with all the guarantees of article 14 of the Covenant. There again, she concurred with Mr. El Shafei's views. The trial of Mr. Bazoft for example had not complied with those conditions.

62. Thirdly, there should be full freedom of expression. The Iraqi delegation had claimed, as a legal principle, that restrictions could be justified by reference to the level of development, but she found no support for such a contention in the Covenant. What was more, Iraq had made vast sums available to spend on the most modern technology. Although there were permitted limitations to the freedom of expression, they had to be applied objectively and should never diminish the reality of the right itself.

63. The fourth and last prerequisite was the absence of a climate of fear, which, like other members of the Committee and in particular Miss Chanet and Mr. Fodor, she believed, was continuing.

64. The treatment of the Kurds and the Shiites would continue to command international attention. She was not satisfied with the reply that Iraq was cooperating fully with international organizations in the marsh areas when, according to her information, such organizations were not accorded the freedom of access they sought.

65. Several members of the Committee had commented that self-determination was not merely for colonial peoples. She herself had not, as the reply from the Iraqi delegation appeared to indicate, asserted that it was a right of all minorities. That was not her position or the Committee's. Minority rights were a separate issue. All people, including minorities, had the right to take part in the political system and social destiny; if that was not the case they did not enjoy their right to self-determination.

66. She did, however, note several encouraging elements such as the code of human rights, the abolition of the Revolutionary Court, the permission for the existence of political parties, the proposed new Constitution and the amnesty laws. Nevertheless, there was still a long way to go and the Committee would be watching developments closely in the hope that such scrutiny would play a part in the future provision of human rights for all the people of Iraq.

67. Mr. ANDO said that, although a number of promising points had emerged from the dialogue with the Iraqi delegation, some answers to questions had not been entirely satisfactory. The Covenant had been said to be directly applicable in Iraqi courts, but when the delegation had been asked for specific examples it had been unable to give them. Mr. Lallah had asked that greater provision should be made for the judiciary in the draft new Constitution but had not received a clear answer. Despite Mrs. Higgins' question, the position of the Baath Party in law and fact had not been clarified. Mr. Wennergren had tried to elucidate the status of freedom of expression, but on that point too replies had been confined to principles, not practice.

68. On the other hand, he was pleased that Iraq had sent a delegation to exchange views with the Committee. That was a very significant act in view of the extremely difficult situation prevailing in Iraq. Iraq was also making endeavours to bring its domestic law into line with the Covenant and was taking steps towards pluralism and democracy.

69. Self-determination and minority rights were, as Mrs. Higgins had pointed out, two separate issues. The fact that a group belonged to a particular minority ought not of itself to deprive that group of its right to self-determination.

70. The Iraqi delegation had maintained that article 12 (3) of the Covenant gave grounds for the detention of aliens during the period following 2 August 1990, but he disagreed with that view.

71. He considered that though the judicial process might be considered slow it was a more desirable means of challenging an election result than giving those powers to the Assembly. Iraq might like to reconsider that point.

72. He had great sympathy with the difficulties the Iraqi people were currently experiencing since his memories of the difficult period through which his country had passed following the Second World War were still vivid in his mind. For all its difficulties, however, Japan had chosen not to return to the ways of war but to take the path of democracy and peace to eventual recovery. He hoped that Iraq would make a similar choice, since it provided the best safeguard for human rights.

73. Mr. LALLAH said that Iraq's reasons for not implementing the rights set out in the Covenant were unacceptable. He agreed with Mr. Myullerson that Iraq's difficulties had been self-inflicted and would disappear if it was prepared to comply with the demands of the international community.

74. The Iraqi delegation had tried to link economic, social and cultural rights with the enjoyment of civil and political rights. It was quite clear that was not appropriate in the situation now prevailing in Iraq. The problems caused by the economic situation did not excuse neglect of the rights set out in the Covenant. He, like many other members of the Committee, welcomed the preparation of a new Constitution. However, redrafting of chapter III of the present Constitution to include all the rights covered by the Covenant would not ensure respect for the political rights of the people, which were the driving force of the political system since the Constitution elsewhere made provision for the existence of a self-perpetuating, self-established regime in whose formation the people had no say. Like Mr. Wennergren, he looked forward to a new Constitution that would ensure a separation of powers and preclude the operation of an arbitrary and dictatorial regime insensitive to the rights of the people.

75. The CHAIRMAN thanked the delegation of Iraq for the sincere efforts it had made to answer the many questions asked during a lengthy exchange of views which had extended over two sessions. The Committee was grateful to the Iraqi delegation for its willingness to return to certain issues that had been left open at the previous session and to provide supplementary information on those points.

76. The Committee's concerns, as the Iraqi delegation would understand, had been the more serious as they related to a situation in which human rights were not being observed. The Committee was well aware of the very difficult conditions now prevailing in Iraq and the grave threat to the health of its citizens, and more particularly its children, that had resulted from the war and the present economic situation.

77. Those tragic circumstances did not, however, dispense the Government of Iraq from its obligation to ensure that human rights were observed in the country in accordance with the provisions of the Covenant. He appealed to the Government to ask itself whether it was doing everything in its power to safeguard human rights in the present tragic conditions. The point was not whether the Government had the means to supply medicines and food under present conditions; it was whether the Government was doing all it could itself to improve the situation.

78. He thanked the delegation of Iraq for meeting the Committee and for its cooperation. He hoped that the concerns expressed by the Committee would be conveyed to the Government and would contribute to an improved observance of human rights in Iraq in the interests of all that country's people.

79. Mr. MAHMOOD (Iraq) said that the dialogue with the Committee had been most useful and expressed his delegation's thanks for the understanding and patience shown by the Committee. Iraq would thereby be encouraged to continue its efforts to build a constitutional and a democractic society. He was also grateful for the sympathy the Committee had shown for the deep suffering imposed on the Iraqi people by the economic sanctions and trade embargo, which constituted ar unavoidable obstacle to the enjoyment of human rights in Iraq.

80. The CHAIRMAN said that the Committee had concluded its consideration of the third periodic report of Iraq (CCPR/C/64/Add.6).

The meeting rose at 1 p.m.